IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ORIGINATING SUMMONS NO.2957 of 2006

Padmakar Samant. .. .. Plaintiff

V/s.

Jillian Manmohan Samant & ors. .. .. Defendants

Dr.Virendra Tulzapurkar, Senior Advocate with Mrs.V. Divekar, Ms.Pallavi Divekar i/by M/s.Divekar & Co. for Plaintiff.

CORAM : SMT.R.S. DALVI, J.

Dated : 23rd March, 2007

P.C. :

1. The Plaintiff is the sole executor of the Will of Manmohan Balkrishna Samant executed on 25.3.2000 and probated on 25.11.2004. It is the contention of the Plaintiff that under Clause 13 of the Will, a life interest is created in favour of the wife of the testator in respect of the premises called Rukmini Apartment in which she is entitled to reside during her lifetime. Under Clause 15 of the Will,

the executor is required to create a Trust of the movable and immovable properties of the testator. The corpus and the income earned from the Trust is used for the enjoyment and maintenance of the wife of the testator during her lifetime.

2. It is seen that the provision for residence and maintenance is made for the wife by the testator as per the provisions of Section 14(1) of the Hindu Succession Act. She becomes an absolute owner in respect thereof, upon she coming in possession of the said property. As an absolute owner, the wife would be entitled to transfer the property inter vivos as well as to bequeath the property by testamentary disposition.

3. The Plaintiff desires to execute the Deed of Transfer in favour of a wife of the testator in terms of the Draft of the Deed of Transfer, Exhibit-C to the Plaint. Under the said Deed of Transfer, the movable and immovable properties would be transferred to the wife described in Schedules A and B to the Plaint, which I am told, includes the premises of Rukmini Apartment, which is a part of Samant Wadi at

Goregaon East, Mumbai 400 063.

4. The Deed of Transfer makes a provision for the said transfer subject to the three conditions. The first condition is that it will be subject to the Will dated 25.3.2000 of the deceased, the second is the payment of taxes, dues and duties payable to the Government, Semi-Government Bodies and Municipal Authorities and the third condition is that after her death, the property would automatically vest in the trustees of a Trust already created by the relatives of the testator.

5. The Plaintiff has obtained her consent in this Originating Summons by way of an Affidavit, which is shown to the Court. The Plaintiff' sAdvocates identify her signature on the Affidavit. The Plaintiff has also produced a copy of the letter addressed to her showing the work done by the Plaintiff as the executor under the Will with regard to the transfer of the entire properties (movable and immovable) to her absolutely or to a private Trust subject to the conditions mentioned in the letter. She is stated to have signed the proposal contained in the letter as acceptable

to her, which signature is also identified by the Attorneys of the Plaintiff.

6. In view of the legal position contained in Section 14(1) of the Hindu Succession Act, the transfer must be absolute and complete in favour of the wife of the testator since the immovable property being the premises of Rukmini Apartment is given to her as and by way of maintenance and residence and is in lieu of her maintenance. The second condition about the payment of taxes and cesses to the Government follows as a corollary to the transfer being effected in her favour. The third condition relating to the transfer of the property upon her death to the Trust already existing can be created only with her consent.

7. She is entitled to be transferred all the immovable properties absolutely. She may transfer the other properties as a life interest as per the provisions contained in the Will dated 25.3.2000. It may be mentioned that Clause 15 of the Will requires the Trust to be created during her life- time and not after her death. The Trust is to be created of the movable and immovable properties of

the testator at the time of his death. The corpus and the income of the Trust is required to be used by his wife for her enjoyment and maintenance during her lifetime. In view thereof, the transfer to her is liable to be made without the first condition mentioned in the operative part of the Deed of Transfer. Accordingly, the words "but subject to the said Will dated 25th March 2000 of the deceased" shall be deleted. She shall be entitled to sell, lease, transfer, dispose of or deal with the properties mentioned in Schedules 1 and 2 of the Deed of Transfer subject to the payment of taxes and, upon her consent being obtained (and since her consent has been obtained), subject to the properties being automatically vested in the trustees of the Trust already created and which is existing.

8. Hence, the questions are answered as follows:-

(i) The Plaintiff is entitled to execute the Deed of Transfer with the amendments stated above.

(ii) The Plaintiff shall stand discharged of his obligations as the sole executor under the Will of the deceased upon transfer being effected as stated above.

(iii) Such transfer will be a compliance with the wishes of the deceased.

9. The Originating Summons is disposed of accordingly.

(SMT.R.S. DALVI, J.)